

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SARAH REMER AND CODY REMER

Plaintiffs,

vs.

Civil Action No. 3:11-cv-00142

FINANCIAL RECOVERY SERVICES, INC.

Defendant,

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

SARAH REMER AND CODY REMER, (“Plaintiffs”), through the undersigned counsel, Dave Lilley, allege the following against FINANCIAL RECOVERY SERVICES, (“Defendant”):

INTRODUCTION

1. This is an action for actual and statutory damages brought by plaintiffs Sarah Remer and Cody Remer, individual consumers, against defendant Financial Recovery Services, Inc., for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”) and the Texas Debt Collection Practices Act, § 392 *et seq.* (hereinafter “TDCPA”) which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is

proper in that the Defendant transacts business here and the conduct complained of occurred here.

PARTIES

3. Plaintiffs, Sarah Remer and Cody Remer are natural persons residing the city of El Paso, El Paso County, Texas.

4. Defendant, Financial Recovery Services, Inc. is a corporation engaged in the business of collecting debt in this state with its principal place of business located at 4900 Viking Drive, Edina, MN 55435. The principal purpose of Defendant is the collection of debts in this state and Defendant regularly attempts to collect debts alleged to be due another.

5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

6. Defendant placed collection calls to Plaintiffs, seeking and demanding payment for an alleged consumer debt owed under an account number.

7. Upon information and belief, Defendant began placing collection calls to Plaintiffs in March of 2011.

8. During collection calls, Defendant has threatened to commence litigation against Plaintiffs, without having the standing to sue Plaintiffs, stating, “We will take you guys to court.”

9. To date, Defendant has not commenced litigation against Plaintiffs.

10. During a collection call, Plaintiffs were lied to, or at the very least, misled by Defendant, through false and misrepresentative statements that indicated that Defendant was

going to commence litigation against Plaintiffs, when Defendant does not have the legal standing to do so.

11. Defendant utilized unfair and unconscionable means to try to get payments from Plaintiffs, by lying to them.

12. As a result of the acts alleged above, Plaintiffs suffered emotional distress resulting in them feeling stressed.

CLAIM FOR RELIEF

13. Plaintiffs repeat and reallege and incorporate by reference to the foregoing paragraphs.

14. Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- (a) Defendant violated §1692e(10) of the FDCPA by using false, deceptive, or misleading representation or means in connection with the collection of Plaintiff's alleged debt; and
- (b) Defendant violated §1692e(5) of the FDCPA by threatening to take action that it did not intend to take; and
- (c) Defendant violated §1692f of the FDCPA by using unfair or unconscionable means in connection with the collection of an alleged debt.

15. As a result of the foregoing violations of the FDCPA, Defendant is liable to the plaintiffs Sarah Remer and Cody Remer for declaratory judgment that Defendant's conduct violated the FDCPA, actual damages, statutory damages, and costs and attorney fees.

CLAIM FOR RELIEF

16. Plaintiffs repeat and reallege and incorporate by reference the foregoing paragraphs.

17. Defendant violated TDCPA § 392. Defendant's violations of TDCPA § 392 include, but are not limited to the following:

a) Defendant violated TDCPA § 392.304(19) by using any other false representation or deceptive means to collect on the alleged debt or obtain information concerning Plaintiffs.

18. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiffs to pay the alleged debt.

19. As a result of the above violations of the TDCPA § 392, Defendant is liable to Plaintiffs for injunctive and declaratory relief and for actual damages, statutory damages, and attorney fees and costs.

WHEREFORE, Plaintiffs respectfully request that judgment be entered against defendant Financial Recovery Services, Inc., for the following:

A. Declaratory judgment that Defendant's conduct violated the FDCPA, and declaratory and injunctive relief for Defendant's violations of TDCPA § 392.

B. Actual damages.

C. Statutory damages pursuant to 15 U.S.C. § 1692k.

D. Statutory damages pursuant to TDCPA § 392.

E. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k and TDCPA § 392.

F. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs SARAH REMER AND CODY REMER
demand trial by jury in this action.

This 13th day of April, 2011.

ALEX SIMANOVSKY & ASSOCIATES, LLC

/s/ Dave Lilley

Dave Lilley, Esq.
TX Bar No. 24035064
Attorney for Plaintiff

Alex Simanovsky & Associates, LLC
1912 Loop 11
Wichita Falls, TX 76306
Phone: 1-866-865-3666, Ext. 1056
Fax: 877-570-5413

Corporate Office Address:
2300 Henderson Mill Road, Suite 300
Atlanta, GA 30345
Phone: (770) 414-1002, Ext. 1012
Fax: (770) 414-9891